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ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

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No. 02A04-0802-PC-115

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July 29, 2008

KIRSCH, Judge

William H. Duvall III (“Duvall”) brings this pro se appeal from the post-conviction court’s denial of his petition raising the following restated issue: whether the trial court’s findings supported its conclusion to deny Duvall’s petition for education credit time.

We reverse and remand.

FACTS AND PROCEDURAL HISTORY¹

On December 2, 1999, a jury convicted Duvall of two counts of child molesting,² each as a Class A felony.³ The trial court sentenced Duvall to thirty years for each conviction, and ordered the sentences to be served consecutively. Duvall’s convictions were affirmed on direct appeal.

While incarcerated, Duvall enrolled in a high school correspondence program with American School (“American”),⁴ located in Lansing, Illinois. Duvall obtained a diploma from American on June 12, 2006. On August 14, 2006, Duvall filed a Motion for Additional Earned Credit Time with the post-conviction court, seeking one year of credit time. The post-conviction court denied Duvall’s request on September 12, 2006. On appeal, our court dismissed Duvall’s appeal on the basis that he had not requested education credit time from the Department of Correction (“DOC”), and therefore, he had failed to exhaust his

¹ For the facts and procedural posture of this case, we look to this court’s prior unpublished memorandum decisions for Duvall’s direct appeal, *Duvall v. State*, No. 02A03-0009-CR-332 (Ind. Ct. App. Jan. 31, 2001), and his prior post-conviction appeal, *Duvall v. State*, No. 02A04-0611-PC-636 (Ind. Ct. App. June 26, 2007).

² See IC 35-42-4-3.

³ Duvall was also convicted of child molesting as a Class C felony, but the trial court vacated that conviction on double jeopardy grounds.

⁴ The school’s website can be found at [Hhttp://www.americanschoolofcorr.com](http://www.americanschoolofcorr.com)H.

administrative remedies. *Duvall v. State*, No. 02A04-0611-PC-636, slip op. at 6 (Ind. Ct. App. June 26, 2007).

On July 7, 2007, Duvall submitted a Request for Interview (State Form # 36935) to a counselor with the DOC, which stated:

I need something in writing that states that the DOC will not give me a time cut for my correspondence course High School Diploma. A copy of . . . e-mails would suffice.

Appellant's App. at 1. The DOC counselor gave Duvall the following DOC internal e-mail, which he had received from his superior:

Am I correct in the following?

Offender Duvall is requesting credit time consideration for the completion of a correspondence course that resulted in a certificate.

The [DOC] does not recognize out-of-state certificates as representative of an Indiana High School Diploma for the purpose of credit time. The courts have consistently held that such certificates are not substantially similar to those diplomas issue[d] by Indiana's accredited high schools.

Also, Offender Duvall did not follow the policy that governs enrollment in correspondence courses.

Id. at 3.

On November 28, 2007, Duvall filed a Formal Grievance (State Form # 45471) with the DOC, in which Duvall set out his grievance as follows:

I requested a time cut for a high school diploma for a correspondence course in which I enrolled in 22 March 2005 and completed June 2006. Mr. Beard contacted Ms. Mann and was informed that time cuts were no longer recognized by DOC for correspondence courses. I was given a grievance form upon request but I never received a response back on that grievance filed on or about 9-24-07. . . . In order for me to pursue a legal course of action I must pursue relief through the grievance process. This is my second grievance

request on this matter and I have not received a response back on my first grievance submitted 9-24-07.

Id. at 5. Two days later, the DOC filed a Return of Grievance (State Form # 45475), stating: “The attached grievance is being returned to you because . . . credit time is not grevable [sic] issue. Only DOC approved courses receive a time cut[,] see attached.” *Id.* at 6.⁵

On December 17, 2007, Duvall filed a second Motion for Additional Earned Credit Time. *Id.* at 7-8. The post-conviction court denied this motion on December 20, 2007 without making findings of fact or conclusions thereon. Duvall now appeals.

DISCUSSION AND DECISION

Duvall contends that the post-conviction court erroneously denied his motion for additional earned credit time. A petition for post conviction relief is the proper vehicle for the review of credit time determinations when, like here, immediate release is not the relief sought. *McGee v. State*, 790 N.E.2d 1067, 1069 (Ind. Ct. App. 2003), *trans. denied*. Under the rules of post-conviction relief, the petitioner must establish his grounds for relief by a preponderance of the evidence. *Peace v. State*, 736 N.E.2d 1261, 1264 (Ind. Ct. App. 2000), *trans. denied* (2001). A petitioner who has been denied post-conviction relief appeals from a negative judgment, and must convince the appellate court that the evidence as a whole leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. *McCary v. State*, 761 N.E.2d 389, 391 (Ind. 2002). We consider only the evidence that supports the post-conviction court’s decision along with any reasonable inferences from that evidence. *Id.*

⁵ It is not clear from the record before us what, if anything, was attached to the DOC’s Return of

Our Supreme Court has said:

A court that hears a post-conviction claim must make findings of fact and conclusions of law on all issues presented in the petition. *See* Ind. Post-Conviction Rule 1(6). The findings must be supported by facts and the conclusions must be supported by the law. *See Bivins v. State*, 735 N.E.2d 1116, 1121 (Ind. 2000), *reh'g denied*. Our review on appeal is limited to these findings and conclusions.

Allen v. State, 749 N.E.2d 1158, 1164 (Ind. 2001), *cert. denied*, 535 U.S. 1061 (2002). Here, the post-conviction court's order provided, in its entirety, as follows:

Defendant's pro se Motion for Additional Time, filed [sic] December 17, 2007, is reviewed and denied without hearing. Court notes a similar request was filed by [D]efendant and denied by the trial court on September 12, 2006.

Further, the Defendant's appeal of this very issue was dismissed.

Appellant's App. at 17.

The post-conviction court denied Duvall's petition for the reasons that the trial court denied a similar petition, and thereafter, our court dismissed the appeal in June 2007. *Id.* While the trial court did deny a similar petition, we note, however, that our court dismissed the appeal in June 2007 because Duvall had failed to exhaust his administrative remedies. Duvall remedied this defect by filing his grievance with the DOC and receiving the response that "credit time is not grievable [sic] issue." *Appellant's App.* at 6. The DOC's response revealed that it intended to take no further action on Duvall's petition for education credit time.

Indiana law provides:

- (a) . . . a person earns credit time if the person:
 - (1) is in credit Class I;

Grievance.

(2) has demonstrated a pattern consistent with rehabilitation; and
(3) successfully completes requirements to obtain one (1) of the following:

(B) A high school diploma

(d) The amount of credit time a person may earn under this section is the following:

(2) One (1) year for graduation from high school.

IC 35-50-6-3.3. As our court noted in *McGee*, under this statute's provisions: "a person is entitled to one year of credit time if he obtains 'a high school diploma.'" 790 N.E.2d at 1070 (quoting IC 35-50-6-3.3(a)(3)(B) (emphasis added)).

The *McGee* court further noted:

The intent behind the educational credit time statute was to enhance rehabilitation by providing incentive to further one's education while incarcerated. There is no basis in either the language of the statute or the purpose behind it for the DOC's policy of denying credit time for a high school diploma not earned in Indiana, assuming that the requirements for earning the out-of-state diploma are similar to Indiana's requirements.

Id. "[T]he statute does not preclude a person from earning credit time for a diploma granted by an out of state school as long as the standards of instruction for earning that diploma are substantially similar to those in Indiana." *Id.*

Here, the State makes no argument that the trial court's summary disposition of Duvall's petition was proper. Rather, it argues that Duvall failed to present any evidence that he demonstrated a pattern consistent with rehabilitation or that the high school diploma that he received is substantially similar to those in Indiana. However, because the trial court dismissed Duvall petition without a hearing, Duvall had no opportunity to present such evidence.

The post-conviction court denied Duvall's Motion for Additional Earned Credit Time without holding a hearing or making any specific findings of fact or conclusions thereon. Pursuant to the post-conviction rules, "The court shall make specific findings of fact, and conclusions of law on all issues presented, whether or not a hearing is held." Ind. Post-Conviction Rule 1(6). Limited, as we are, to only reviewing the post-conviction court's findings and conclusions, we therefore remand this case with instructions for the post-conviction court to enter findings and conclusions to support the disposition of Duvall's petition for education credit time. In doing so, the trial court shall determine whether this case is appropriate for summary ruling or whether a hearing should be held.

Reversed and remanded.

FRIEDLANDER, J., and BAILEY, J., concur.